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December 7, 2018

Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage,
WC Docket No. 18-155; 8YY Access Charge Reform, WC Docket No. 18-156

Dear Ms. Dortch:

On December 4, Tim Boucher, Christy Londerholm (by phone), Julie Ward (by phone), and I, on behalf of CenturyLink, met with Pamela Arluk, Irina Asoskov, Gregory Capobianco, Lynne Engledow, Justin Faulb, Victoria Goldberg, Lisa Hone, Christopher Koves, Al Lewis, Rhonda Lien, Douglas Slotten, Gil Strobel, and David Zesiger of the Wireline Competition Bureau regarding the above-captioned matters. The discussion was consistent with CenturyLink's previous filings in these proceedings.¹ In the discussion, the CenturyLink representatives emphasized the following points.

I. Reforms to Eliminate Access Arbitrage

The Commission should promptly adopt the CenturyLink "direct connection" proposal described in CenturyLink's May 21, 2018 ex parte.² As explained there, the Commission should

¹ See Comments of CenturyLink, WC Docket No. 18-155 (filed July 20, 2018); Reply Comments of CenturyLink, WC Docket No. 18-155 (filed Aug. 3, 2018); Letter from Timothy J. Boucher, CenturyLink, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-155, et al. (filed May 21, 2018) (CenturyLink May 21, 2018 ex parte); Comments of CenturyLink, WC Docket No. 18-156 (filed Sept. 4, 2018); Reply Comments of CenturyLink, WC Docket No-18-156 (filed Oct. 1, 2018).

² See CenturyLink May 21, 2018 ex parte at 3.

require carriers to offer other carriers direct or indirect connection with no additional charge for all terminating switched access traffic.³ This would mean that any such carrier that refused a request for direct interconnection on a bill-and-keep basis would be required to bear the financial responsibility for any intermediate services associated with the indirect interconnection. CenturyLink explained that its proposal would apply to all LECs, including competitive LECs as well as both rural and non-rural incumbent LECs, in addition to CMRS providers.

CenturyLink also urged the Commission to adopt the NTCA, et al. proposal for addressing access stimulation schemes.⁴ As CenturyLink observed in its comments, because access stimulating schemes can easily be relocated from one place to another, and because access stimulation schemes exist in order to generate access charges, merely providing an IXC a right to demand either direct connection or that the access stimulating LEC pay for an indirect arrangement will not fully address the problem caused by access stimulation.⁵ That is so because if the IXC deploys facilities to directly connect with the access stimulating LEC, the access stimulating activity will have both the ability and a compelling economic incentive to simply move elsewhere, leaving the IXC with facilities to a destination that does not have traffic to justify those facilities. As the CenturyLink representatives observed, a policy that has the predictable effect of causing carriers to waste capital investment dollars is not the best approach. Rather, the better policy is the one the Commission endorsed in the *USF/ICC Transformation Order*, which was to establish a regulatory framework that would, over time, eliminate the incentive to engage in access stimulation.⁶ The NTCA, et al. proposal does just that.

II. 8YY Access Charge Reform

The Commission should adopt reforms to its 8YY intercarrier compensation rules that would address the real, legitimate issues identified in the record, but which could be implemented quickly and easily, with minimum disruption. Consistent with CenturyLink's comments,⁷ the Commission should:

- Immediately cap database query rates at \$0.0042,⁸ and then transition over three years to a cap of \$0.0015, imposing a limit of one database query charge per call.

³ *Id.*

⁴ See Letter from NTCA, et al., CC Docket No. 01-92, et al., to Marlene H. Dortch, Secretary, FCC (filed Nov. 16, 2017).

⁵ See Comments of CenturyLink, WC Docket No. 18-155, at 7.

⁶ See Connect America Fund, et al., WC Docket No. 10-90, et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd. 17663, 17879 ¶ 672 (*USF/ICC Transformation Order*) (stating that the Commission's objective was to "address ... incentives to engage in access stimulation").

⁷ See Comments of CenturyLink, WC Docket No. 18-156.

⁸ In its comments, CenturyLink suggested that the immediate cap should be set at \$.0043. Because the basis for setting that cap is Inteliquent's calculation of a national weighted average database query

- Transition originating end office access charges to bill-and-keep over three years.
- Cap originating tandem switching and transport charges for both affiliated and unaffiliated traffic at a low, uniform rate, such as the \$0.0017 rate proposed by Inteliquent,⁹ after a three-year transition.
- Provide an opportunity for incumbent LECs to recover revenues in the same manner that competitive LECs do, by permitting incumbent LECs to charge a SLC disciplined by the competitive market and eliminating the ARC.

As CenturyLink explained, the Commission's proposal to transition tandem switching and transport to bill-and-keep for all traffic will require carriers that do not currently have the capability to perform the database query for an 8YY call to either develop that capability or make new contractual arrangements to displace current arrangements for the handling of 8YY calls. Yet it is not clear that such an approach is necessary, particularly given the likelihood that a less disruptive approach, such as the one supported by CenturyLink, will address the concerns identified in the record and in the Further Notice.

The Commission's alternate proposal, transitioning tandem switching and transport rates to bill-and-keep for traffic from affiliates, would not address charges for a significant amount of traffic and would also provide incentives for carriers to rehome behind un-affiliated tandems to avoid the effect of the rule. Nevertheless, the CenturyLink representatives observed, a rule imposing bill-and-keep on tandem switching and transport only for traffic from affiliates is preferable to a rule imposing bill-and-keep for both affiliated and unaffiliated traffic, because at least it could be easily implemented. If the Commission were to adopt a bill-and-keep rule for affiliated traffic, it should define "affiliates" on a holding company basis.¹⁰ The CenturyLink representatives further observed that the CenturyLink proposal of a uniform, nationwide rate cap for tandem switching and transport charges would likely be easier for carriers to implement than the Commission's proposal that all tandem owners benchmark their tandem charges to the charges that would be assessed by the incumbent LEC serving the LATA where the call originates.¹¹

The Commission should also, consistent with the suggestion in the Further Notice, provide incumbent LECs an opportunity to recover their costs like competitive LECs do, through an end user charge (whether called a SLC or something else), that is disciplined by the

rate of \$.004248, *see id.* at 14 & n.25 (citing Letter from Gerard J. Waldron, Counsel for Inteliquent, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, et al. at 2 (filed Dec. 21, 2017) (Inteliquent Dec. 21, 2017 ex parte)), CenturyLink amends its previous proposal.

⁹ See Inteliquent Dec. 21, 2017 ex parte at 2.

¹⁰ See Comments of CenturyLink, WC Docket No. 18-156, at 9-10.

¹¹ See 8YY Access Charge Reform, WC Docket No. 18-156, Further Notice of Proposed Rulemaking, FCC 18-76, 33 FCC Rcd. 5723, 5738 ¶ 49. CenturyLink noted that some carriers already have the capability to comply with the Commission's proposal, but other carriers may not.

competitive market, which would allow the Commission to eliminate the ARC.¹² In the alternative, CenturyLink urged the Commission to simplify its access recovery mechanisms by combining the ARC and the SLC and setting a single cap for the combined charge, while eliminating the residential rate ceiling, or at least allowing it to adjust over time as prices for residential services change.

The CenturyLink representatives observed that permitting incumbent LECs to recover lost access revenues from end users would be fully consistent with the concept that 8YY calls are “toll-free,” and that end users should not bear the costs of an 8YY call. Arguments to the contrary confuse the concepts of average cost and incremental cost. The costs presently recovered through end office access charges and tandem charges are not the incremental costs of supporting 8YY service, but are instead costs associated with simply having a network. This is, of course, is not a new observation—it is precisely what the Commission concluded almost a decade ago in the context of its reforms of terminating access charges.¹³ There is no more legitimate policy basis for recovering those costs from IXC and their 8YY subscribers than there was in the terminating context.¹⁴

Please contact me if you have any questions.

Sincerely,

Joseph C. Cavender

cc: Pamela Arluk
Irina Asoskov
Gregory Capobianco
Lynne Engledow
Justin Faulb
Victoria Goldberg
Lisa Hone
Christopher Koves
Al Lewis
Rhonda Lien
Douglas Slotten
Gil Strobel
David Zesiger

¹² See *id.* at 5742 ¶ 63.

¹³ See *USF/ICC Transformation Order*, 26 FCC Rcd. at 17911 ¶ 752.

¹⁴ Costs associated with performing database queries, on the other hand, are directly attributable to providing 8YY service, which is why CenturyLink supports a cap on those charges that permits carriers to recover reasonable costs for performing that function.